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SUBRAMANIAM GOVINDARAJOO v. PENGERUSI, LEMBAGA PENCEGAH JENAYAH & ORS

HIGH COURT MALAYA, IPOH
HAYATUL AKMAL ABDUL AZIZ JC
[JUDICIAL REVIEW NO: 25-8-03-2015]
28 MARCH 2016

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ADMINISTRATIVE LAW: *Judicial review – Certiorari – Supervision order pursuant to s. 15(1) of Prevention of Crime Act 1959 ('POCA') – Application to quash supervision order – Procedures and statutory requirements in granting supervision order – Whether complied with – Whether supervision order valid*

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On 16 June 2014 the applicant was arrested by the police (power of arrest without warrant) under s. 3 of the Prevention of Crime Act 1959 ('POCA'). On 17 June 2014 the applicant was brought before the Magistrate under s. 4(1)(a) of the POCA and was ordered to be remanded for 21 days commencing from 17 June 2014 until 7 July 2014 ('first remand order'). On 7 July 2014 *ie* the day the remand order was to expire, the applicant was brought before the same Magistrate under s. 4(2)(a) of the POCA who ordered that the applicant be further remanded for 38 days commencing from 8 July 2014 until 14 August 2014 ('second remand order'). On 9 July 2014, an inquiry officer held an inquiry as required under s. 9 of the POCA. On 17 July 2014, under s. 10(2) of the POCA, the inquiry officer made a finding that there were reasonable grounds for believing that the applicant was a member of any of the registrable categories under para 2, Part 1 of First Schedule (registrable categories) of the POCA. On 21 July 2014, the finding of the inquiry officer was submitted to one Inspector Dasarathan which was then served on the applicant. Upon receipt of the same, the applicant requested a review of the said finding to the Prevention of Crime Board ('the Board'). On 14 August 2014, the Board confirmed the said finding and duly notified the inquiry officer of that decision. The inquiry officer then duly notified the Register of Criminals of the said confirmation. The name of the applicant was, on the same day *ie* on 14 August 2014, entered into the Register of Criminals under s. 12(1) of the POCA. The Board was informed of the said registration by the inquiry officer. Subsequently, the Board proceeded to issue an order pursuant to s. 15(1) of the POCA to place the applicant under restricted residence with police supervision for a period of five years from 14 August 2014 ('the said decision'). It was the contention of the applicant that there were procedural non-compliance by the respective respondents, *inter alia*, in the process which led to the making of the police supervision order which the applicant alleged was null and void. It was averred by the applicant, *inter alia*, that (i) the investigating officer was not authorised under the POCA and therefore the inquiry was rendered invalid; (ii) the inquiry officer took two days from the issuance of the second remand order to hold the required inquiry, as such, it had prejudiced the applicant;

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and (iii) the decision of the Board for police supervision was not valid for non-compliance with s.10(4) of the POCA on the basis that the Board failed to serve a copy of the Board's decision and failed to explain the same to the applicant. In the circumstances, the applicant applied and was granted leave for judicial review only in respect of the order by the respondents pursuant to s. 15(1) of the POCA, *ie* the placing of the applicant under police supervision and nothing more.

Held (dismissing application with costs):

(1) The Prevention of Crime (Amendment and Extension) Act 2014 inserted an exclusion clause in the form of s. 15A limiting the power of the court to review administrative decision and action pursuant to this statute except in cases of procedural irregularity or non-compliance. The merits and/or exercise of the administrative discretion cannot be challenged as regards to the POCA save and except on procedural non-compliance. Therefore, the duty of this court is to peruse the process and determine if there are any procedural irregularities that warrant the setting aside of the order of the Board. (paras 15, 17 & 64)

(2) According to s. 8 of the POCA, the Minister may appoint any person other than police officer, to be an inquiry officer. There was no requirement under the act for an inquiry officer to prove or produce any document to support his/her appointment as an inquiry officer. The inquiry officer, in her affidavit, clearly stated that she was appointed by the Minister under s. 8 of the POCA and she was not and had never been a police officer. Notwithstanding that, all procedures and statutory requirements were complied with during the inquiry as provided under s. 9 of the POCA. In the circumstances, the applicant's objection was not substantiated with any authority or supporting evidence and remained just that, a bare allegation devoid of merits. (para 32)

(3) Section 6 of the POCA legislated that the time period for the applicant to be referred to the inquiry officer to be 'as soon as possible' which would hold out to be as soon as reasonably possible which in turn denote under fair and sensible circumstances as opposed to unjustifiable and or unreasonable delay by the inquiry officer. Further, there was no fixed time period requirement under s. 9 of the POCA for the inquiry officer to complete her findings. The inquiry officer took two days to hold the inquiry because she had to peruse the applicant's case, documents and evidence that was available, examination of witnesses and she had to give reasonable time for the police to get the witnesses that she required. Therefore, the delay of two days was reasonable in the circumstances of the case and it did not in any way prejudice the applicant and/or invalidate the finding of the inquiry officer. (para 34)

(4) Under s. 10(2) of the POCA, the inquiry officer, after being satisfied that there were reasonable grounds for believing that the applicant was a member of any of the registrable categories, was required to report the grounds together with her finding to the Board, and shall forward a copy of her finding to the officer having custody of the person, and the officer having custody of the person shall forthwith serve a copy of the finding of the inquiry officer on that person. At this juncture, there exist no requirement that the decision of the Board had to be served on the applicant. Section 10(4) of the POCA was not applicable in the present case as it only applied when the inquiry officer was satisfied that there were no sufficient grounds for believing that the applicant who was the subject of the inquiry was a member of any of the registrable categories. Since there was no such procedural requirement, there could not be a non-compliance, as such, the contention of the applicant must fail. (paras 43, 44, 47 & 52)

(5) Section 15(1) of the POCA provides that a supervision order could legally be made against those whose names had been entered into the Registrar of Criminals. Registration was quite plainly a condition precedent for the making of any supervision order within the ambit of the POCA. Indeed, s. 15 on police supervision is the first section in Part IV of POCA which provides the 'consequences of registration'. By issuing the supervision order, the Board must had been satisfied that a supervision order should be made in this case and this consideration support this court's view that the Board did not act mechanically. As such, the allegations made by the applicant on procedural irregularity in respect of the order dated 14 August 2014 to place the applicant under restricted residence with police supervision was not legally sustainable and as a matter of course must fail. In the premise, there was no legitimate grounds to allow judicial intervention in the action taken against the applicant by the respective respondents. (paras 70 & 71)

Case(s) referred to:

Abdul Razak Baharudin v. Ketua Polis Negara & Ors And Another Appeal [2005] 4 CLJ 445 FC ***(refd)***

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC ***(refd)***

Attorney General of Belize v. Belize Telecom Limited [2009] UKPC 10 ***(refd)***

Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd [2010] 1 CLJ 269 FC ***(refd)***

Gan Chong Guan Transport Sdn Bhd v. Ketua Pengarah Jabatan Pengangkutan Jalan Malaysia & Ors [2012] 2 CLJ 389 CA ***(refd)***

Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***

Parasuraman Velu v. Ketua Polis Negara, Malaysia & 2 Ors [2006] 1 LNS 248 HC ***(refd)***

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal [2002] 4 CLJ 105 FC ***(refd)***

PP v. Mohamed Ali [1962] 1 LNS 129 HC ***(refd)***
PP v. Teh Cheng Poh [1979] 1 LNS 82 HC ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Legislation referred to:
Prevention of Crime Act 1959, ss. 2, 3, 4(1)(a), (2)(a)(i), 6, 7B, 8, 9, 10(1), (2), (3)(a), (b), (4), 11(1), 12(1), 15(1), 15A, 19A
Rules of Court 2012, O. 53 r. 3(6), (7)

For the applicant - Terence Naidu V Raja; M/s Gibb & Co
For the respondents - Noor Mawarni Abdull Halim; FC, Ministry of Home Affairs

Reported by Sandra Gabriel

JUDGMENT

Hayatul Akmal Abdul Aziz JC:

Introduction

[1] This is an application for judicial review under O. 53 of the Rules of Court 2012 (RC 2012) by the applicant for the following orders:

(a) an order of *certiorari* and/or declaration to quash the decision of the first respondent.

(b) an order of *certiorari* and/or declaration to quash the decision of the respondents dated 14 August 2014 for an order to place the applicant under restricted residence with police supervision pursuant to s. 15(1) of the Prevention of Crime Act 1959 (Act 297) (of POCA).

Brief Facts

The facts of this case can be summarised as follows:

[2] On 16 June 2014 the applicant was arrested by the police (power of arrest without warrant) under s. 3 of the POCA. The next day on 17 June 2014 the applicant was brought before a Magistrate under s. 4(1)(a) of the POCA and was ordered to be remanded for 21 days commencing from 17 June 2014 until 7 July 2014.

[3] On 7 July 2014 the day the remand order was to expire, the applicant was brought before the same Magistrate under s. 4(2)(a) of the POCA who ordered that the applicant be further remanded for 38 days commencing from 8 July 2014 until 14 August 2014. On the same day upon the issuance of the second remand order, an inquiry officer (appointed under s. 8 of POCA) was notified of the same. On 9 July 2014 at 8am, the inquiry officer held an inquiry as required under s. 9 of the POCA.

[4] On 17 July 2014, under s. 10(2) of the POCA the inquiry officer made a finding that she was satisfied that there were reasonable grounds for believing that the applicant is a member of any of the registrable categories under para. 2, Part 1 of First Schedule (registrable categories) of the POCA.

[5] On 21 July 2014, the finding of the inquiry officer and Borang 1 was then submitted to one Inspector Dasarathan a/l Subramaniam which was served on the applicant. Upon receipt of the same, the applicant completed Borang 1 and under s. 11(1) of the POCA and requested a review of the said finding to the Prevention of Crime Board ("the Board").

[6] On 24 July 2014, the inquiry officer reported to the Board her grounds together with her finding and the completed Borang 1. After receiving the application for review, the Board on that same day, sought the advice of the legal officer. Upon receipt of the advice from the legal officer on 5 May 2014, the Board sat for a review of the said finding on 14 August 2014 at 9.30am.

[7] On 14 August 2014 at 9.30am, upon making the review process and after considering the advice from the legal officer, the Board decided to confirm the said finding and duly notified the inquiry officer of that decision. On that same day upon receipt of this confirmation, the inquiry officer duly notified the Registrar of Criminals of the said confirmation.

[8] The name of the applicant was then on the same day (14 August 2014) entered into the Register of Criminals by the Registrar of Criminals under s. 12(1) of the POCA and the inquiry officer was also informed of the same. The inquiry officer than immediately informed the Board of the said registration of the applicant in the Register of Criminals by the Registrar of Criminals.

[9] Subsequently, the Board reconvened in the afternoon on 14 August 2014 and upon being satisfied that all papers were in order and the applicant had been duly registered in the Register of Criminals, proceeded to issue the order pursuant to s. 15(1) of the POCA to place the applicant under restricted residence with police supervision for a period of five years from the date of the said order dated 14 August 2014.

[10] The applicant then elected to challenge the said decision after the lapse of the three-month time period as allowed under O. 53 r. 3(6) of the RC 2012 (running from the date of that order). The applicant subsequently succeeded in getting the time extended to apply for leave for judicial review pursuant to an application under O. 53 r. 3(7) of the RC 2012 and on 27 July 2015 leave was granted by the learned Judicial Commissioner at the time. It should be noted however, that the leave granted for judicial review was only in respect of the order by the respondents pursuant to s. 15(1) of the POCA, ie, placing the applicant under police supervision and nothing more.

The Applicant's Grounds For Relief

[11] The applicant challenges the validity of the said police supervision order and the grounds relied on by the applicant to support his judicial review application was set out in his supporting affidavits and the

accompanying statement made pursuant to O. 53 r. 3 of the RC 2012 in which the applicant contended that there were non-compliance by the respective respondents concerning not only his arrest and remand but also the subsequent steps in the process which among others led to the making of the police supervision order which the applicant alleged is null and void.

[12] This court will examine the aforesaid grounds by evaluating the key points of submission as set out in the written submissions of learned counsel for the applicant, the reply by learned Senior Federal Counsel (SFC) for the respondents and further elaboration at the hearing of the application before this court on 18 January 2016.

The Law

[13] The Malaysian position on judicial review of administrative actions and decision is very clear in that the court has wide reaching powers of review and to issue the orders or writs in the nature of *habeas corpus*, *mandamus*, prohibition *quo warranto*, *certiorari*, for the enforcement of rights conferred by the Federal Constitution Pt. II (arts. 5-13), or any of them, or for other purpose. Justice Jeffery Tan JCA (as he then was) in the Court of Appeal decision in *Gan Chong Guan Transport Sdn Bhd v. Ketua Pengarah Jabatan Pengangkutan Jalan Malaysia & Ors* [2012] 2 CLJ 389 (referring to the Federal Court decision in the case of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145, FC) held that judicial review pursuant to O. 53 of the RC 2012 is the appropriate remedy only if a dispute has substantive principles of public law and not otherwise.

[14] The scope of review process that justify judicial intervention in this present case is directed at the decision of the Board specifically in placing the applicant under police supervision pursuant to s. 15 of the POCA.

[15] The Prevention of Crime (Amendment and Extension) Act 2014 (A1459) which came into force on the 2 April 2014, inserted an exclusion clause (ouster clause) in the form of s. 15A limiting the power of the court to review administrative decision and action pursuant to this statute except in cases of procedural irregularity or non-compliance.

[16] Section 15A reads as follows:

> **Judicial review of act or decision of Board**
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> 15A (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Board in the exercise of its discretionary power in accordance with this Act, except in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.
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> (2) In this Act, "judicial review" includes proceedings instituted by way of:

A (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;

(b) an application for a declaration or an injunction;

(ba) a writ of *habeas corpus*; and

B (c) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Board in accordance with this Act.

[17] Therefore, the merits and/or exercise of the administrative discretion cannot be challenged as regards to the Prevention of Crime Act 1959 (POCA) C save and except on procedural non-compliance. See the decision of the Federal Court in *Abdul Razak bin Baharudin v. Ketua Polis Negara & Ors And Another Appeal* [2005] 4 CLJ 445; *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 (FC); *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal* [2002] 4 CLJ 105; "… It has followed D entrenched principles which can be effectively summed up as follows: that an ouster clause may be effective in ousting the court's review jurisdiction if that is the clear effect that Parliament intended; that the intention of Parliament is expressed in words which are clear and explicit, then the court must give expression to that intention. Clearly the intention of the Parliament is to be garnered from the wordings of the ouster clause."

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[18] This court refers to the Federal Court decision in *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914; which held that: "... in our view, the courts must give effect to the amendments. That being the law, it is the duty of the court to apply them …, the first thing that F the court should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the court should look at the provisions of the law or the rules that lay down procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement, then there cannot G be non-compliance thereof". In the circumstances this court will give effect to the said amendment as mandated by the said legislation and fully acknowledged the set parameters as introduced by the said amendments.

Illegal Detention

H **[19]** The applicant was arrested under s. 3 of the POCA which allows the police to arrest the applicant without warrant. For ease of reference this court sets up the particular section.

Arrest and production before a Magistrate

I 3(1) A police officer may without a warrant arrest any person if he has reason to believe that grounds exist which would justify the holding of an inquiry into the case of that person under this Act.

(1A) When a person is arrested under subsection (1), the case shall be referred by the police officer to the Public Prosecutor for direction not later than seven days from the date of arrest.

(2) Any person arrested under subsection (1) shall, unless sooner released, be taken without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) before a Magistrate.

[20] Counsel for the applicant submitted that the remand order issued against the applicant was not valid because in the remand order the applicant has to be remanded at the Lokap Balai Polis Bercham Ipoh when in fact as alleged by the applicant he was remanded at the IPD Sentral in Ipoh. This averment as stated in the affidavit in support at para. 24 (not at para. 22 as submitted) (encl. 2) and para. 14 of his affidavit in reply (encl. 12) demanded that the log book be produced and tendered in court. In response SFC asserted that the remand order is not an issue to be tried because the leave granted was only confined to the police supervision order by the board. This court concurs with the submission put forward by learned SFC but for completeness this court will briefly elaborate on this issue.

[21] At the outset it is to be noted that there was no complaint filed or any appeal made regarding the two remand orders given by the Magistrate and this court opines that the applicant cannot now at this juncture protest detention pursuant to the said remand orders. In the instant case this court finds that the applicant was arrested and detained for investigation and inquiry under s. 3 of the POCA on 16 June 2014 and was brought before the learned Magistrate on 17 June 2014. Therefore, the 24-hour period had been complied with.

[22] The applicant was brought before the Magistrate for remand order under s. 4(1)(a) of the POCA. For ease of reference this court sets up the particular section.

Procedure before Magistrate

4(1) Whenever any person is taken before a Magistrate under subsection 3(2), the Magistrate shall:

(a) on production of a statement in writing signed by a police officer not below the rank of Inspector stating that there are grounds for believing that the name of that person should be entered in the Register, remand the person in police custody for a period of twenty-one days; or

(b) if no such statement is produced, and there are no other grounds on which the person is lawfully detained, direct his release.

(2) Any person remanded under paragraph (1)(a) shall, unless sooner released, on or before the expiry of the period for which he is remanded be taken before a Magistrate, who shall:

(a) on production of:

(i) a statement in writing signed by the Public Prosecutor stating that in his opinion sufficient evidence exists to justify the holding of an inquiry under section 9; and

(ii) a statement in writing signed by a police officer not below the rank of Assistant Superintendent stating that it is intended to hold an inquiry into the case of that person under section 9,

order the person to be remanded in custody for a period of thirty-eight days; or

(b) if no such statements are produced, and there are no other grounds on which the person is lawfully detained, direct his release.

(2A) No person shall be arrested and detained under this section solely for his political belief or political activity.

(3) Except as provided in subsection 9(5), the provisions of section 28A of the Criminal Procedure Code shall apply to any person remanded under section 4.

[23] The applicant in this case was remanded for 21 days after the learned Magistrate issued the order for his detention expiring on 7 July 2014 as can be seen from exh. "DN2" of the affidavit in reply by one Deepa Nair a/p Thevaharan affirmed on 26 August 2015 (encl. 8), the duly appointed inquiry officer under s. 8 of the POCA. A statement signed by a police inspector by the name of Inspector Dasarathan a/l Subramaniam was adduced before the learned Magistrate as required under s. 4(1)(a) of the POCA can be seen in exh. "DN3" (encl. 8). This court finds that the said statement in writing signed by Inspector Dasarathan a/l Subramaniam G/18343 who is a police officer not below the rank of Inspector, stating that there are grounds for believing that the name of the applicant should be entered in the Register kept by the Registrar of Criminals under s. 12(1) of the POCA. Therefore, this court finds that the requirement for the first remand order had been satisfactory and in accordance with the statute concerned.

[24] Before the expiry of the 21-day remand period, the applicant on 7 July 2014 was brought before the same learned Magistrate seeking an extension of the remand order for 38 days under s. 4(2) of the POCA which was granted by the learned Magistrate. The order of the said Magistrate can be seen in exh. "DN4" of encl. 8. A statement signed by the Public Prosecutor or the Deputy Public Prosecutor by the name of Dato' Mohamad Hanafiah bin Hj Zakaria stating his opinion that sufficient evidence exists to justify the holding of an inquiry on the applicant, was adduced before the learned Magistrate as required under s. 4(2)(a)(i) of the POCA can be seen in exh. "DN5" (encl. 8). And the required statement by a police officer not below the rank of Assistant Superintendent Mohd Nor bin Kassim G/11938 pursuant to s. 4(2)(a)(i) of the POCA, can also be seen in exh. "DN6" (encl. 8), stating that an inquiry is intended to be held in the applicant's case.

Similarly, this court finds that the requirement for the second remand order had also been fully complied with in accordance to the requirement of the statute concerned.

[25] Consequently therefore, this court holds that all the necessary requirements in making the application for remand has been complied with and this court does not find any irregularity in terms of procedure which could taint the legality of both remand orders.

[26] According to para. 10 of the corrective affidavit of Deepa Nair a/p Thevaharan, (inquiry officer) affirmed on 30 September 2015 (encl. 16), the inquiry officer on oath said that the applicant was remanded at a holding cell in Bercham Police Station contrary to the allegation by the applicant. This court finds there is no reason for the inquiry officer to lie but to state the truth and unless Deepa Nair said something that is inherently improbable her evidence must in the first instance be accepted. In *PP v. Teh Cheng Poh* [1979] 1 LNS 82; [1979] 1 MLJ 50, Gunn Chit Tuan J (as he then was) referred to the decision of Thomson CJ (as he then was) in the case of *PP v. Mohamed Ali* [1962] 1 LNS 129, 258 when His Lordship said as follows: "When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If he says he saw a cow jumping over the moon his evidence is, of course, not to be accepted, but if he says he saw a cow wandering along one of the main streets of Kuala Lumpur (the sort of things we all see every day in our lives) there is not the slightest justification for refusing to believe him. Of course if his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent improbability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted".

[27] This court finds that though Deepa Nair is not a police officer but she carried out her duty impartially as a duly appointed inquiry officer and in light of what was said by Thomson CJ (as he then was) *supra*, this court could not find the required justification not to believe Deepa Nair in her sworn statement (affidavit). This court therefore finds that the allegation by the applicant is unfounded and merely a bare assertion and the affirmation by Deepa Nair confirming the aforesaid position remained unchallenged.

The Log Book

[28] The applicants in his affidavit affirmed on 11 September 2015 para. 4 averred that he was not remanded at Balai Polis Bercham which would not be in compliance with the remand order exh. "DN2" and "DN4 (encl. 8) and therefore argued that his remand was consequently rendered invalid. The applicant at para. 14 in the same affidavit further averred that the log book will show that he was not remanded at Balai Polis Bercham. At this juncture this court wishes to note that at no time had the applicant apply

for further discovery under O. 53 r. 6 of the RC 2012 for the production of this log book. For ease of reference this court sets out the O. 53 r. 6 of the RC 2012:

> 6. After leave has been granted, any party to an application for judicial review may apply to the Judge for discovery and inspection of documents pursuant to Order 24, to administer interrogatories pursuant to Order 26, or to cross-examine the deponent of any affidavit filed in support of or in opposition to the application pursuant to Order 38.

[29] This court wishes to refer to the oral submission by learned SFC who submitted that the leave granted by this court for judicial review is only confined to the issue of the order given by the Board for the applicant to be placed under police supervision pursuant to s. 15 of the POCA and other issues regarding arrest and remand were never raised before this and hence the production of log book at this juncture is irrelevant. This court agrees with the submission by learned SFC and this court takes cognisance of the fact that the applicant had never applied for discovery of documents and for the applicant to raise the issue now in their affidavit is unfair to the respondents. The evidence before this court remained as per the application, statement, affidavit in support, affidavits in opposition, affidavit in reply and the exhibits produced. This court is satisfied that with the evidence available before this court, the applicant was indeed remanded at Balai Polis Bercham and not at the IPD Sentral Ipoh or any other balai for that matter.

[30] However, this court would like to add that once there is a valid and enforceable remand order which constitute a judicial order of the court of law; it follows that such a person detained under the said remand order may be moved from one lawful place of detention to another in order to facilitate investigation for so long as the principle lawful place of detention remained unchanged. In the circumstances, it would follow that the act of the detaining authority in moving the person detained from one place of lawful detention to another during the process of investigation cannot as matter of law constitute a fundamental non-compliance of the remand order with a view to render the detention of the said person unlawful except in cases of outright abuse or where such person had been unfairly prejudiced by the detaining authority in regard to the said remand order which in this case do not apply. This inconsequential issue should not be allowed to be used to the detriment of any investigation by the relevant authorities. What remained certain throughout this case is that the applicant had never initiated and or taken any action to challenge the two lawful remand orders and the detention under the two said orders thereof.

The Appointment Of The Inquiry Officer

[31] The applicant in his affidavit in reply affirmed on 11 September 2015 (encl. 12) para. 3 averred without adducing any supporting evidence that Deepa Nair is not authorised and therefore the inquiry is rendered invalid. The said contention can be found at para. 25 in the said affidavit as follows:

25. Saya juga sesungguhnya percaya bahawa Pegawai Siasatan adalah bukan seorang yang berkelayakan dan juga telah dilantik secara sah dan justeru itu seluruh penyiasatan yang beliau lakukan serta laporan beliau ada tidak sah di sisi undang-undang. Justeru itu tidak ada satu laporan yang sah untuk menjustifikasikan Perintah Pengawasan berkenaan. Saya juga sesungguhnya percaya Pegawai Siasatan tidak melakukan tindakan statutory beliau seperti yang dikehendaki undang-undang. Ini merupakan pra-syarat bagi pengeluaran Perintah Pengawasan berkenaan.

[32] Section 8 of the POCA provides that the Minister may appoint any person other than police officer, to be an inquiry officer and there is no requirement under the act for an inquiry officer to prove or produce any document to support his/her appointment as an inquiry officer. The duty of an inquiry officer only comes in after a person is remanded for a further 38 days under s. 4(2)(a) of the POCA. Further, s. 9 of the POCA provides that when a person is brought before an inquiry officer, the inquiry officer shall inquire and report in writing to the Board whether there are reasonable grounds for believing that the person is a member of any of the registrable categories. The said inquiry is carried out on the basis of the investigation carried out by the police officer. This court is of the opinion that Deepa Nair in her affidavit (encl. 8) clearly stated at para. 2 that she is the inquiry officer appointed by the Minister under s. 8 of the POCA and she is not and has never been a police officer. Deepa Nair in her corrective affidavit (encl. 16) averred that the said inquiry was done in such manner and in accordance with all required procedures of an inquiry officer appointed under s. 8 of the POCA. She had access to all relevant documents related to the arrest and remand of the applicant, the investigation records and other records related to this case. All procedures and statutory requirements were complied with during the inquiry as provided under s. 9 of the POCA. This court finds that the applicant's objection is not substantiated with any authority or supporting evidence and remained just that, a bare allegation devoid of merits.

[33] The applicant in his affidavit (encl. 12) contended that the inquiry officer took two days from the issuance of the second remand order on the 7 July 2014 to hold the required inquiry (9 July 2014) and as such it has prejudiced him. This court holds this argument to be legally untenable as the inquiry was still held within the period of the lawful remand order. The applicant never ventured to explain in his affidavit the manner in which he was prejudiced.

[34] Briefly, this court refers to s. 6 of the POCA which provides that every person remanded in custody under s. 4 of the POCA shall, if not sooner released, as soon as possible be brought before an inquiry officer.

S. 6 of POCA provides as follows:

Every person remanded in custody under section 4 shall, if not sooner released, as soon as possible be brought before an inquiry officer.

Section 6 of the POCA clearly legislated that the time period for the subject to be referred to the inquiry officer to be "as soon as possible" which this court would hold out to be as soon as reasonably possible which in turn denote under fair and sensible circumstances as opposed to unjustifiable and or unreasonable delay by the inquiry officer. This court found that the inquiry officer on 7 July 2014 was duly informed on the same day when the second remand order was given. In the present case the inquiry officer on 9 July 2014 held an inquiry as required under s. 9 of the POCA in order to make a finding as to the position of the applicant as a person reasonably believed to be capable or not being capable of being registered under any of the registrable categories. This court refers to para. 9 of Deepa Nair's affidavit (encl. 8) which stated among others that she took two days to hold the inquiry because she had to peruse the applicant's case, documents and evidence that is available, examination of witnesses and she has to give reasonable time for the police to get the witnesses that she requires and not to mention other cases that she has to attend to and at no time did she tried to prejudice the applicant as it was held within a reasonable time in the circumstances of the case. Section 9 of the POCA provides the duties and powers of inquiry officer whereby when any person is brought before an inquiry officer under s. 6, the inquiry officer shall inquire and report in writing to the Board. This court finds that the inquiry officer by the name of Deepa Nair a/p Thevaharan through her affidavit (encl. 8) had adequately set out the steps and procedures that were carried out, her access to all relevant materials and evidence that pertains to the arrest, the remand, investigation papers and other records pertaining to the same and this courts finds the delay of two days is reasonable in the circumstances of the case and it did not in any way prejudice the applicant and or invalidate the finding of the inquiry officer. This court also finds that there is no fixed time period requirement under s. 9 of the POCA for the inquiry officer to complete her findings and in this case this court is of the opinion that the explanation given by the inquiry officer is acceptable and since there is no statutory requirement to say otherwise, the delay of two days as in this present case is not an unreasonable delay that will prejudice the applicant.

Appointment Of The Board/Non-compliance With s. 7B Of The POCA

[35] The applicant's affidavit of support affirmed on 4 March 2015 (encl. 2), stated that the Board had failed to prove compliance with s. 7B of the POCA in respect of the establishment of the Board especially concerning the appointment of the Chairman and other members of the Board.

[36] The said averment can be found at paras. 18 and 26 of the said affidavit, as follows:

18. Saya dengan rendah diri menyatakan bahawa peruntukan Seksyen 7B Akta tersebut tidak dipatuhi.

26. Saya telah dinasihati bahawa Lembaga Pencegahan Jenayah merupakan satu lembaga yang tidak sah di sisi undang-undang serta Pengerusi berkenaan adalah tidak berkelayakan untuk memegang jawatan berkenaan and anggota-anggota juga tidak dilantik secara sah. Lembaga tidak menjalankan tindakan statutory selaras dengan undang-undang dan ini menjadikan seluruh penahanan saya sebagai tidak sah. Ini menjadikan seluruh tindakan yang diambil sehingga pengeluaran Perintah berkenaan sebagai tidak sah di sisi undang-undang. Saya juga tidak dapat representasi yang cukup semasa pendengaran/perbicaraan yang dijalan oleh Lembaga Pencegahan Jenayah.

[37] For ease of reference s. 7B of the POCA reads as follows:

Prevention of Crime Board

(1) A Prevention of Crime Board is established which shall consist of the of the following members to be appointed by the Yang di-Pertuan Agong:

(a) a Chairman, who shall be a legally qualified person with at least fifteen years in the legal field;

(b) a Deputy Chairman; and

(c) not less than three and not more than six other members.

(2) Every member of the Board shall, unless he sooner resigns, hold office for a period not exceeding three years and is eligible for re-appointment once for another period of three years.

(3) Every member of the Board may, at any time resign his office, by giving notice in writing to the Yang di-Pertuan Agong.

(4) …

(5) …

(6) …

(7) …

[38] In his affidavit in reply affirmed on 26 August 2015 (encl. 7), the Chairman of the Board had specifically stated in para. 2 the names of the members of the Board and in para. 13 the Chairman not only stated his own qualifications but also the statement that his appointment as the Chairman and that of four other members were valid as the same had been lawfully made by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong in accordance with s. 7B of the POCA. And there is no basis to disbelieve the statement made by the Chairman of the Board in his affidavit concerning the said appointments made in the course of performing an official duty with no personal interest. This court finds that this averment had not been challenged by the applicant's affidavit-in-reply and it is trite law that

such averment is deemed admitted by the applicant. This court refers to the case of *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609 which stated that any averment that had not been challenged would render such averment to be deemed admitted.

Non-compliance With s. 10(4) Of The POCA

[39] Counsel for the applicant submitted that the decision of the Board for police supervision is not valid for non-compliance with s. 10(4) of the POCA anchored on the basis the Board failed to serve a copy of the Board's decision and failed to explain the same to the applicant. Reference was made to the case of *Parasuraman Velu v. Ketua Polis Negara, Malaysia & 2 Ors* [2006] 1 LNS 248 which states that "The first non-compliance is that there was no evidence whatsoever from the respondents in any of their affidavits to show that Form II (notice of hearing of representation) was indeed served on the applicant and if so by whom and or whether it was explained and translated to the applicant in the language he understood …"

[40] Learned counsel further submitted that exh. "DAK2" as enclosed in affidavit of Dato Ahmad Kamal bin Mohd Shahid (the Chairman of the Board) affirmed on 26 August 2015 (encl. 7) is the decision as mentioned in s. 10(4) of the POCA. Hence the respondents should serve the decision to the officer in charge of the applicant and not to the Chief Police Officer of Pahang. Failure by the Board to serve its decision and explain the contents of the said decision is in contravention of s. 10(4) of the POCA which would have the effect of rendering the order of police supervision unlawful.

[41] Learned SFC disagreed and submitted that the inquiry officer in her finding stated that "terdapat alasan-alasan munasabah bagi mempercayai bahawa orang yang disiasat (pemohon di dalam kes ini) ialah anggota mana-mana kategori". And based on the above, the inquiry officer reported the grounds together with her finding to the Board.

[42] The respondents submitted that there are two situations under s. 10 of the POCA which can be distinguished as follows:

(a) Firstly, if the inquiry officer is satisfied that there are **no sufficient grounds** (emphasis added) for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, under the provision of s. 10(1) of the POCA, the inquiry officer shall report his finding together with his reasons for it to the Board and forward a copy of his finding to the officer having custody of the person. The Board after considering the finding of the inquiry officer can either make an order for immediate release of the person as provided under s. 10(3)(a) or the Board shall proceed in accordance with Parts III, IV and IVA of this Act as provided under s. 10(3)(b) of the POCA. And if the Board makes a decision under s. 10(3)(b) of the POCA, it shall

forward a copy of its decision to the officer having custody of the person, who shall forthwith serve a copy of the decision of the Board on that person.

(b) Secondly, if the inquiry officer is satisfied that there are **reasonable grounds** (emphasis added) for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report the grounds together with his finding, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the inquiry officer on that person.

The power of the Board to review the decision of the inquiry officer is as provided under s. 11 of the POCA, which reads as follows:

Review by the Board of decision of Inquiry Officer

11(1) Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) or decision under paragraph 10(3)(b) may, within fourteen days of the service thereunder of the copy of the finding or decision on him, by notice in writing, request the Board to review the finding or decision.

(2) The Board shall, upon making any review under subsection (1), and after considering the advice of a law officer thereon:

(a) confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b); or

(b) reverse the finding or decision: Provided that if the Board reverses any such finding or decision, and the person who made the request is still in custody, the Board shall, within twenty-four hours of its decision, direct the person to be taken before a Sessions Court Judge, who shall thereupon discharge the order of remand and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.

[43] Learned SFC submitted that the present case fits the second situation whereby the inquiry officer after being satisfied that there are reasonable grounds for believing that the applicant is a member of any of the registrable categories; under s. 10(2) of the POCA the inquiry officer is required to report the grounds together with her finding to the Board, and shall forward a copy of her finding to the officer having custody of the person, and the officer having custody of the person shall forthwith serve a copy of the finding of the inquiry officer on that person. And the person whom the finding was served can apply for a review under s. 11 of the POCA. At this juncture there exist no requirement that the decision of the Board has to be served on the applicant. Therefore, learned SFC submitted that counsel's contention for non-compliance of s. 10(4) of the POCA has to fail.

[44] This court is in agreement with the submission put forward by learned SFC and by reading the provision provided under s. 10(2) of the POCA, there is no such requirement for the Board to serve and explain its decision to the applicant personally.

[45] For ease of reference s. 10 and s. 11 of the POCA are reproduced hereinbelow for scrutinisation:

Report of Inquiry Officer

10 (1) If the Inquiry Officer is satisfied that there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(2) If the Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report the grounds, together with his finding, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(3) Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1) is satisfied with respect to any person that:

(a) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall forthwith direct any person having the custody of that person, within twenty-four hours from the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand made under section 4 and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release;

(b) based on the Inquiry Officer's finding there are sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall proceed in accordance with Parts III, IV and IVA of this Act.

(4) If the Board makes a decision under paragraph (3)(b), it shall forward a copy of its decision to the officer having custody of the person, who shall forthwith serve a copy of the decision of the Board on that person.

Review by the Board of decision of Inquiry Officer

11 (1) Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) or decision under paragraph 10(3)(b) may, within fourteen days of the service thereunder of the copy of the finding or decision on him, by notice in writing, request the Board to review the finding or decision.

(2) The Board shall, upon making any review under subsection (1), and after considering the advice of a law officer thereon:

(a) confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b); or

(b) reverse the finding or decision: Provided that if the Board reverses any such finding or decision, and the person who made the request is still in custody, the Board shall, within twenty-four hours of its decision, direct the person to be taken before a Sessions Court Judge, who shall thereupon discharge the order of remand and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.

[46] Before this court elaborates further it would be wise to look into the finding of the inquiry officer which are as follows:

Dapatan Pegawai Inkuiri Di Bawah Seksyen 10(2) Akta Pencegahan Jenayah 1959, (Akta 297)

Bahawa saya, Deepa Nair a/p Thevaharan, Pegawai Inkuiri mendapati dan berpuas hati bahawa ada alasan-alasan yang munasabah bagi mempercayai bahawa Subramaniam a/l Govindarajoo (No Kp: 600601-05-5857 @ RF/92127) orang yang menjadi halperkara siasatan adalah anggota pertubuhan yang menyalahi undang-undang yang ditubuhkan atau digunakan bagi maksud-maksud yang melibatkan perlakuan kesalahan-kesalahan boleh tangkap di bawah undang-undang yang sedang berkuat kuasa berhubungan dengan prosedur jenayah, dan oleh itu kamu adalah termasuk dalam Kategori Yang Boleh Didaftarkan, Perenggan 2 Bahagian 1, Jadual Pertama, Akta Pencegahan Jenayah 1959 (Akta 297).

[47] This court is of the opinion that the argument put forward by counsel for the applicant is not tenable because in this present case, the inquiry officer made a finding under s. 10(2) where the inquiry officer is satisfied that there are reasonable grounds for believing that the applicant who was the subject of the inquiry is a member of any of the registrable categories. Whereas s. 10(4) of the POCA as argued by counsel for the applicant is not applicable in the present case as it only applies when the inquiry officer is satisfied that there are no sufficient grounds for believing that the applicant who was the subject of the inquiry is a member of any of the registrable categories.

[48] This court refers to the Supreme Court case as submitted by the SFC, *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] CLJ (Rep) 183 where Abdul Hamid Omar LP said: "The court must be careful that the decision is not in conflict with the intention of the Legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of the law … where the Legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions."

[49] This court in looking at the relevant provisions of POCA submitted thus far is also minded to follow the direction of the Federal Court in the case of *Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ where His Lordship Gopal Sri Ram FCJ (as he then was) cited with approval the speech of Lord Hoffmann in delivering the advice of the board in *Attorney General of Belize v. Belize Telecom Limited* [2009] UKPC 11, His Lordship said: "The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed ... It is this objective meaning which is conventionally called the intention of the parties, the intention of the Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument."

[50] In the present case, the Legislature clearly had distinguished between the provision under s. 10(1) and s. 10(2) of the POCA as described above. The court must be careful that the decision is not in conflict with the intention of the Legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of the law where the Legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has set the parameters limiting the scope of such action, the court cannot act outside those powers and conditions.

[51] The case of *Parasuraman Velu (supra)* referred by learned counsel can be distinguished because in that case Justice Lim Yee Lan (JC at that time) found that there was no evidence whatsoever from the respondents in any of their affidavits to show that Form II (Notice of hearing of representation) was indeed served on the applicant and if so by whom and or whether it was explained and translated to the applicant in the language that he understood. Whereas in the present case this court opines that all the statutory requirement had been complied with by the inquiry officer.

[52] This court is bound by the Federal Court decision in *Lee Kew Sang v. Timbalan Menteri Dalam Negeri* [2005] 3 CLJ 914; which held that: "… It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement, then there cannot be non-compliance thereof". Hence, in this case under s. 10(2) of the POCA the inquiry officer report the grounds together with her finding to the Board, and forward a copy of her finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the inquiry officer to the applicant. This court finds that

there is no such procedural requirement for the Board to serve a copy of the finding to the applicant and since there is no such procedural requirement then there cannot be non-compliance and by reasons stated above, the contention by counsel for the applicant must fail.

Non-compliance Of s. 4(1)(a) Of The POCA Regarding The Statement In Writing And The Finding Of Inquiry Officer Is Not Valid

This court agrees with the submission by SFC that the above two issues are related and should be consolidated and heard together.

[53] The applicant argued that there are discrepancies between the investigation and finding of the inquiry officer. The affidavit of Deepa Nair (encl. 8) in exh. DN7 (finding of inquiry officer under s. 10(2) of the POCA), which states as follows:

> … Subramanian a/l Govindarajoo (No KP: 600601-05-5857 @ RF/92127) orang yang menjadi hal perkara siasatan ialah anggota pertubuhan yang menyalahi undang-undang yang ditubuhkan atau digunakan bagi maksud-maksud yang melibatkan perlakuan kesalahan-kesalahan boleh tangkap di bawah undang-undang yang sedang berkuat kuasa berhubungan dengan prosedur jenayah, dan oleh itu kamu adalah termasuk dalam kategori yang boleh didaftarkan, Perenggan 2, Bahagian 1, Jadual Pertama, Akta Pencegahan Jenayah 1959 (Akta 297).

[54] The above finding is clearly inconsistent with the police report marked as exh. DN1 which stated that there is reason to believe that the applicant was involved in murder as categorised in "para 1 Jadual 1, Bahagian 1 seperti ditafsirkan di bawah s. 2 Akta Pencegahan Jenayah 1959 …". Counsel for the applicant further submit that applicant being a member of "kongsi gelap" was never mentioned in the police report exh. DN1. In other words, learned counsel for the applicant questioned as to which provision was the applicant detained under POCA. This ambiguity and uncertainty as to the offences and punishments (whether under First Schedule para. (1)(ii) members of unlawful societies or remanded under First Schedule para. 2 commission of offences under the Penal Code) against the applicant, learned counsel contends, would render the detention a nullity.

[55] Learned SFC however in his reply, submitted that the main issue under POCA is to make sure the subject matter can be registered by the Registrar under s. 12(1) of the POCA. And, to ensure that the subject matter is registered, the Registrar requires the following:

i. the subject matter as finding of the inquiry officer is a person registrable under any of the categories;

ii. whether the subject apply for any review of the finding by the inquiry officer or whether the Board has affirmed the finding of the inquiry officer or the Board's decision;

A iii. the powers of the Registrar is as provided under s. 12 of the POCA and the board has the discretion to direct the Registrar to remove the subject matter's name from the register; and

iv. only after the subject matter is registered can the Board order police supervision for a period not exceeding five years under s. 15 of the
B POCA or detention orders under s. 19A of the POCA.

[56] Learned SFC further submitted that under POCA there are four independent bodies with different functions as follows:

i. the police who makes the arrest and investigation;

C ii. the inquiry officer who will investigate whether the subject is a person registrable under any of the categories;

iii. the Registrar of Criminals who is responsible for the registration of the registrable subject; and

D iv. the Board who will access the finding of the inquiry officer, the review application by the subject, affirmed the decision of the inquiry officer and issue an order for police supervision or detention order.

[57] This court agrees with the submission of learned SFC that the four bodies ie, the police, the inquiry officer, the Registrar of Criminals and the
E Board are four independent bodies with different functions. Even though this court finds that this particular issue raised by counsel is beyond the leave granted for judicial review but for completeness this court will briefly discussed this issue. This court finds that whether it is under para. 1(ii) or para. 2 part 1 of First Schedule, they are still registrable categories under
F POCA. The statement under s. 4(1)(a) of the POCA issued by Inspector Dasarathan a/l Subramanian (exh. "DN3" (encl. 8) is a requirement precedent before the Magistrate can issue remand order under s. 4(1)(a) of the POCA. The statement besides being a statutory requirement is also to support the application for the remand order.

G **[58]** The inquiry officer on the other hand is not bound to follow the statement by the Inspector and in the course of making her inquiry the inquiry officer can make her own finding because she too has to do her own investigation by going through the documents, calling and interviewing the witnesses. It is clear that the intention of the Legislature is for the four bodies
H mentioned above to act independently of each other. This court is of the opinion that if the intention of the Legislature for the inquiry officer to adopt the statement of the Inspector under s. 4(1)(a) of the POCA, the Legislature would have provided so under the Act. Whereas by reading the provision under s. 4, s. 6 and s. 9 of the POCA the Legislature clearly stated the process
I and the procedure for the different bodies to follow.

[59] As this court mentioned earlier, it is not the duty of this court to create procedures but the court's duty is to read and apply the law as provided under the Act. Hence either the applicant is registrable under para. 1(ii) of First Schedule or para. 2 of First Schedule does not invalidate the finding of the inquiry officer because the applicant can still be registered under the registrable categories as provided under the First Schedule of the POCA. And this would also go to show that the inquiry officer is not just dispensing her duty mechanically but she has also applied her mind in assessing the evidence available before her with a view to make a legitimate finding.

Police Supervision Order Under s. 15(1) Of The POCA

[60] The applicant challenges the validity of the said police supervision order and contended that there were non-compliances by the relevant respondents concerning not only his arrest and remand but also the subsequent steps in the process which among others led to the making of the police supervision order which the applicant alleged is null and void.

[61] In this case, it is not disputed that the inquiry officer made a finding under s. 10(2) of the POCA whereby she was satisfied that there were reasonable grounds for believing that the applicant is member of any of the registrable categories. The applicant being dissatisfied with the finding of the inquiry officer requested the Board to review the said finding. The Board sat for a review of the said finding on 14 August 2014 and the Board decided to confirm the said finding and duly notified the inquiry officer of that decision. On that same day upon receipt of this confirmation, the inquiry officer duly notified the Registrar of Criminals of the said confirmation. The name of the applicant was then entered in the Register of Criminals by the Registrar of Criminals under s. 12(1) of the POCA and subsequently the Board proceeded to issue the order pursuant to s. 15(1) of the POCA to place the applicant under police supervision for a period of five years.

[62] Learned SFC submitted that under s. 15 of the POCA the power of the Board to issue an order of police supervision is subject to the satisfaction of the Board on two issues ie:

i. the applicant is a registrable person; and

ii. an order for control and supervision is ordered against the applicant.

[63] The affidavit of the Chairman of the Board in paras. 11 and 12 clearly set out the reason why police supervision was ordered. The Board was satisfied that the applicant has been registered by the Registrar under s. 12(1) of the POCA and by virtue of the power vested under s. 15 of the POCA, the Board was satisfied that the applicant is a registrable person and can be registered under para. 2 part 1 of First Schedule. The applicant in this case was ordered to be placed under police supervision for a period of five years and also restricted to stay in the area of Mukim Kertau, Maran, Pahang.

[64] It has to be reminded that application for judicial review in respect of POCA is not in the merits of that decision but it is limited to the review of the process taken in arriving at that decision. The duty of this court is to peruse the process and determine if there are any procedural irregularities that warrant the setting aside of the order of the Board.

[65] In the present case, at the conclusion of the review proceeding the Board decided to confirm the said finding by the inquiry officer and duly notified the latter of the same. The inquiry officer then advised the Registrar of the said confirmation by the Board which caused the Registrar to enter the applicant and his particulars into the Register under s. 12 of the POCA. For ease of reference s. 12 of the POCA reads as follows:

> REGISTRATION
>
> **Registration of persons believed to be members of any of the registrable categories**
>
> 12 (1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person:
>
> (a) who is reported by an Inquiry Officer to be a person in respect of whom there are reasonable grounds for believing that he is a member of any of the registrable categories; and
>
> (b) who has not requested any review under section 11, or in respect of whom the Board has confirmed the finding made under subsection 10(2) or made or confirmed the decision under paragraph 10(3)(b), together with such other particulars as may be prescribed.
>
> (2) The Board may, if it considers it in the interest of public order or security to do so, with or without inquiry under this Act direct the Registrar to enter in the Register the name, and such other particulars as may be prescribed, of any person who is a member of any of the registrable categories prescribed in Part II of the First Schedule.

[66] For clarity it is to be noted that the decision for police supervision is decision by the Board as provided for under s. 15 of the POCA and not the Chairman since the Chairman has no statutory power under the Act to do so. For ease of reference s. 15 of the POCA reads as follows:

> **Police supervision**
>
> 15 (1) The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years, if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him and may renew any such order for a further period not exceeding five years at a time; and the registered person shall be conveyed under police escort to the State, district, mukim, town or village in which he is required to reside under subsection (2), if any.

(2) Any person placed under the supervision of the police by order made under this section shall also be subject to all or any of the following restrictions, as the Board may by order direct …

[67] Upon being advised by the inquiry officer of the said registration, the Board reconvened in the afternoon of that same day (14 August 2014) and upon being satisfied that all papers were in order proceeded to issue the order pursuant to s. 15(1) of the POCA to place the applicant under restricted residence with police supervision for a period of five years from the date of the said order.

[68] The supervision order included the words "Lembaga Pencegahan Jenayah berpuas hati penama telah didaftarkan oleh Pendaftar Penjenayah menurut s. 12(1) APJ".

The pertinent parts of the supervision order are reproduced hereunder:

Akta Pencegahan Jenayah 1959
Perintah Pengawasan Polis Di Bawah Seksyen 15

Kepada:

Ketua Polis Pahang

Lain-lain Pegawai Polis Dan Mereka Yang Dibenarkan

Bahawasanya Lembaga Pencegahan Jenayah berpuas hati bahawa penama telah didaftarkan oleh Pendaftar Penjenayah menurut subseksyen 12 Akta Pencegahan Jenayah 1959, dan menurut kuasa-kuasa yang diberi kepada Lembaga Pencegahan Jenayah oleh subseksyen 15(1) Akta yang sama, Lembaga Pencegahan Jenayah, adalah dengan ini memerintahkan supaya Subramaniam a/l Govindaraju dari Lokap Balai Polis Bercham, Ipoh Nombor Kad Pengenalan 600601-05-5867 seorang yang berdaftar ditempatkan di bawah pengawasan polis bagi tempoh Lima (5) tahun mulai dari tarikh ini, dan semasa di bawah pengawasan tersebut, penama hendaklah tertakluk kepada sekatan-sekatan yang dinyatakan, iaitu:

(a) Penama hendaklah dikehendaki tinggal dalam kawasan Mukim Kertau, Daerah Maran, Negeri Pahang;

(b) Penama tidak boleh meninggalkan Mukim Kertau di mana penama tinggal itu tanpa kebenaran secara bertulis dari Ketua Polis Pahang;

(c) Penama hendaklah sentiasa memberitahu di mana rumah atau tempat penama tinggal kepada Ketua Polis Daerah di mana penama tinggal itu;

(d) Penama hendaklah berada di dalam rumah atau tempat di mana penama tinggal di antara jam 6 petang/malam dan 6 pagi melainkan jika penama mendapat kebenaran khas yang sebaliknya daripada Ketua Polis Daerah itu;

(e) Penama hendaklah melaporkan diri kepada Balai Polis Chenor pada tiap-tiap hari Isnin, Rabu & Jumaat sepanjang tempoh lima tahun semasa menjalani tempoh Perintah Pengawasan Polis.

Bertarikh pada 14 hari bulan Ogos 2014
tt.

(Dato' Ahmad Kamal bin Md Shahid)
Pengerusi
Lembaga Pencegahan Jenayah
Untuk Dan Bagi Pihak Lembaga Pencegahan Jenayah

[69] The relevant evidential support for the decision taken by the Board can be discovered in the affidavits affirmed by the duly authorised representatives of the Board especially the affidavit by the Chairman of the Board, and other appropriate parties. Having examined the affidavit deposed by the Chairman of the Board in encl. 7, this court is of the view the applicant had been duly registered by the Registrar under s. 12(1) of the POCA and that the Board was satisfied in light of the grounds specified in the affidavit that it was necessary that control and supervision be exercised in accordance with s. 15(1) of the POCA over the applicant without the necessity of detaining him. Paragraphs 12 and 16 of the affidavit of the Chairman of the Board stated the following:

> 12. Saya ingin menegaskan bahawa semua tindakan yang diambil oleh Lembaga Pencegahan Jenayah adalah menurut kuasa dalam peruntukan undang-undang dalam mengeluarkan Perintah Pengawasan Polis tersebut. Dalam hal berkaitan Pemohon, Pemohon telah diperintahkan untuk ditempatkan di bawah pengawasan polis bagi tempoh lima (5) tahun daripada tarikh Perintah Pengawasan Polis dikeluarkan terhadap Pemohon iaitu pada 14-08-2014 dan dikehendaki tinggal dalam kawasan Mukim Kertau, Daerah Maran, Pahang. Saya sesungguhnya menegaskan bahawa Lembaga Pencegahan Jenayah di dalam membuat keputusan tempat Pemohon disekat tersebut telah mengambil kira keperluan bagi mencegah jenayah yang lebih efektif dan bagi pengawalan penjenayah-penjenayah dan orang-orang yang tidak diingini. Lembaga Pencegahan Jenayah juga telah berpuas hati bahawa ianya adalah perlu bagi suatu pengawalan dan pengawasan dilaksanakan terhadap Pemohon tanpa perlu menahan Pemohon. Sesalinan Perintah Pengawasan Polis tersebut adalah seperti yang dilampirkan dan ditunjukkan di sini sebagai "DAK-2" di dalam Afidavit saya ini.
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> 16. Merujuk kepada perenggan 22 di dalam Afidavit Pemohon, saya menafikan dakwaan-dakwaan Pemohon dan sekeras-kerasnya menegaskan bahawa sebelum Lembaga Pencegahan Jenayah mengeluarkan Perintah Pengawasan Polis, Lembaga Pencegahan Jenayah terlebih dahulu telah mengambil kira kesemua faktor termasuklah kebajikan dan kesesuaian tempat sekatan. Walau bagaimanapun, tempat tinggal dan pekerjaan bukanlah tanggungjawab Lembaga Pencegahan Jenayah mahupun Responden-Responden lain tetapi merupakan tanggungjawab dan inisiatif Pemohon sendiri. Tambahan pula Pemohon tidak ditahan secara fizikal dan bebas melakukan aktiviti harian Pemohon tertakluk kepada syarat-syarat yang terkandung dalam Perintah Pengawasan Polis tersebut.

[70] Section 15(1) of the POCA provides that a supervision order can legally be made against those whose names have been entered into the Registrar of Criminals. Registration is quite plainly a condition precedent for the making of any supervision order within the ambit of POCA. Indeed, s. 15 on police supervision is the first section in Part IV of POCA which provides the "consequences of registration". By issuing the supervision order, it is obvious that the Board must had been satisfied that a supervision order should be made in this case and this consideration support this court's view that the board did not act mechahanically.

[71] In light of the foregoing and after closely scrutinising and examining all evidence adduced before it, this court in the upshot concludes that the allegations made by the applicant on procedural irregularity in respect of the order dated 14 August 2014 to place the applicant under restricted residence with police supervision is not legally sustainable and as a matter of course must fail. In the premise this court could not find legitimate grounds to allow judicial intervention in the action taken against the applicant by the respective respondents. Accordingly the applicant's application is hereby dismissed with costs of RM4,000 to be paid to the respondents.